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OFFICE OF GENERAL
COUNSEL

November 24, 2009

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Thomasenia Duncan, Esq.
General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of BALLANY in MUR 6218

Dear Ms. Duncan,

This Response is submitted by the undersigned counsel of behalf of Ball4NY and Mr. Greg Ball, in response to the Complaint designated as Matter Under Review 6218.

The Complaint in this matter was filed by Gary Levine, the Dutchess County Division chairman of the New York Democratic Lawyers Council solely for political and public relations purposes. Mr. Levine's Complaint was executed on October 1, 2009. On October 2, the very next day, news reports of the Complaint appeared, some quoting Mr. Levine directly, and the Complaint was made publicly available. *See* Response Exhibits 2 and 3. The FEC's notification letter to Mr. Ball and his committee, Ball4NY, was date-stamped approximately three weeks later, on October 21, 2009.

Mr. Levine's baseless, politically-motivated Complaint contains four multi-part allegations that are addressed, rebutted, and/or fully explained below. The Complaint, at Paragraph 7, also contains the inflammatory conclusion that "Ball, his campaign and their agents have engaged in a blatant pattern of raising illegal soft money." This statement, presumably included for media consumption, is categorically and demonstrably false, and made without any factual support.

As of November 21, 2009, Mr. Ball ended his Federal candidacy in order to run for the New York State Senate in 2010 and therefore is no longer seeking election to the U.S. House of Representatives. It is Mr. Ball's sincere hope that this matter can be disposed of expeditiously so that he may terminate Ball4NY as soon as possible.

I. Allegation: "Soliciting Illegal Corporate Contributions for a Fundraising Auction"

Mr. Levin's Complaint, at Paragraphs 8-11, alleges:

8. On or about June 5, 2009, Ball's so-called "Congressional Exploratory Committee" held a Golf Outing at Hudson Hills Golf Course and Murphy's Restaurant. *See Exhibit A.*
9. The outing included a "silent auction." *See Exhibit A.*
10. On or about May 1, 2009, Jacqueline Ambrosino, a Ball representative, sent an email to a distribution list soliciting donations for the silent auctions. *See Exhibit A.* "We are looking for tickets to sporting events, televisions, gift certificates to restaurants and services (such as legal and accounting services), foursomes for other golf courses, trips, plane tickets, spa gift certificates, televisions, just to name a few..." *Exhibit A.*
11. The May 1, 2009, email expressly asked for corporate contributions: "You can reach out to your network *and try to get donations from both businesses and people.*" *Exhibit A (emphasis supplied).* "When working with a business, you can emphasize the foot traffic that will be generated by having their name featured at our event and in a brochure to be handed out to everyone that attends." *Exhibit A (emphasis supplied).*

The attached Exhibit A appears to be an email or letter from Jacqui Ambrosino, although Mr. Levin's attachment omits the usual email header information. The Complaint indicates the email was distributed on May 1, 2009. Attached to this Response is a full copy of the email in question, including header information. *See Response Exhibit 4.* Ms. Ambrosino's email was in fact sent on May 1, 2009, and it was sent to the Ball committee's general email distribution list of individual supporters and donors.

Paragraph 8 of the Complaint states that the Golf Outing was held by Mr. Ball's exploratory committee. This is incorrect. The text of the email that appears in Exhibit A of the Complaint nowhere states that the event was to be hosted by Mr. Ball's exploratory committee.

The signature block of Ms. Ambrosino's email indicates that she was acting on behalf of "Ball4NY Congressional Exploratory Committee 2010."¹ At the time Ms. Ambrosino sent the email in question, Mr. Ball had not yet filed his FEC Form 2 Statement of Candidacy. Thus, Ms. Ambrosino's signature block was correct as of the date it was sent. Mr. Ball filed both FEC Form 2 Statement of Candidacy and FEC Form 1 Statement of Organization on May 6, 2009. *See Response Exhibits 5 and 6.* Ms. Ambrosino's email was distributed prior to the date on which Mr. Ball announced his candidacy and filed Forms 1 and 2 with the FEC.

The golf outing was hosted and paid for in full by Ball4NY. *See Affidavit of Maria DiSalvo at ¶¶ 2-3 and Response Exhibits 1-A and 1-B.*

¹ Ms. Ambrosino's signature block changed to "Greg Ball's Congressional Campaign 19th district 2010" at some point in early May 2009.

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The Complaint appears to allege that Paragraphs 10 and 11 detail one or more violations of 2 U.S.C. §§ 441a, 441b and 441i(e). As a preliminary matter, the Complaint does not allege that any prohibited source in fact donated any item to the silent auction, or that any prohibited source in fact purchased any item at the silent auction. Accordingly, Paragraphs 10 and 11 cannot support the Complaint's unspecified allegation that either 2 U.S.C. §§ 441a or 441b were violated.²

To the best knowledge of the Treasurer of Ball4NY, no prohibited source contributed any item to the silent auction, and no prohibited source purchased any item at the silent auction. See Affidavit of Maria DiSalvo at ¶¶ 6-8 and Exhibit 1-C. The spreadsheet attached as Exhibit 1-C lists all items contributed to the silent auction, the contributor, and the value of the in-kind contribution, along with a reference to the Schedule A and B entries for each itemized in-kind contribution transaction. In addition, spreadsheet lists the purchaser of each item, along with the amount paid, and the Schedule A entry for each contribution. This spreadsheet provides – to the best of Ms. DiSalvo's knowledge – a full accounting of all contributions received in connection with the Ball4NY silent auction. (In the course of preparing this Response, a small number of reporting errors were discovered. Most of these errors involve not itemizing the multiple contributions of repeat donors whose aggregate contributions to Ball4NY exceeded \$200. Ball4NY's treasurer, Maria DiSalvo, is in the process of preparing and filing appropriately amended reports.)

The Complaint's allegation that "The May 1, 2009, email expressly asked for corporate contributions" is simply incorrect. The email referenced in the Complaint as Exhibit A mentions donations from "businesses." Under the Federal Election Campaign Act, as amended, several forms of "businesses" are not classified as prohibited sources and may in fact make contributions to federal campaign committees. Partnerships, certain LLCs, and sole proprietorships may all contribute federal funds to federal political committees. See 11 C.F.R. §§ 110.1(e) (partnership contributions), 110.1(g) (LLC contributions), Advisory Opinion 1981-03 (Robinson) ("Thus, a permissible contribution by a person or business which is not incorporated, such as a partnership or sole proprietorship, is subject to the limits of 441a.") (emphasis added). The Complaint conflates "businesses" with "corporations," and provides no evidence whatsoever that any corporation, or any other prohibited source, played any role whatsoever in the silent auction. Either the complainant, an attorney, doesn't understand the difference between "business" and "corporation" or he purposely blurred the distinction for political advantage.

In fact, the FEC itself has used the term "business" in exactly the same way as Ms. Ambrosino did in her email. For example, in Advisory Opinion 1981-03, the Commission explained:

To summarize, payment of the costs of The Spokesman can be allocated between State and local elections and Federal elections. The amount allocable to Federal elections must be paid for from sources permissible under the Act which are contained in the account of the Federal campaign committee. Corporate funds could not be used to defray the costs

² Alternatively, a complaint that "contains no information that contributions . . . came from a prohibited source . . . is merely speculative and does not provide a sufficient threshold to support reason to believe findings." MUR 6171/6172 (Cooney for Congress Committee), *Factual and Legal Analysis* at 2.

of the Federal portion. "Business" (e.g., partnerships or sole proprietorships) funds however, may be used to defray the costs of the Federal portion if they are not given by a prohibited source, such as a corporation or labor organization, and do not exceed limits in 2 U.S.C. § 441a.

Footnotes omitted and emphasis added. See Response Exhibit 11.

While Ms. Ambrosino's email contained absolutely no improper solicitations of funds, Respondent also notes that Ms. Ambrosino was a volunteer for Ball4NY. She was not authorized by the candidate or the candidate's campaign to send the email in question. The email was sent from her personal email account, not a "ball4ny.com" email account, and was not reviewed, approved, or authorized before it was distributed by Ms. Ambrosino, at her own expense. The Ball4NY campaign did not subsequently send a "correction email" because it determined that there was nothing improper in Ms. Ambrosino's email. For reasons entirely unrelated to the aforementioned email, Ms. Ambrosino's volunteer work with the Ball4NY campaign ended in late June or early July 2009.

Respondent is well-aware of the source restrictions contained in the FECA. The "Contribution Form" and "In Kind Contribution Form" used by Ball4NY are far more detailed than those of many campaigns. See Response Exhibits 7 and 8. Simply stated, these are not the forms of a campaign that "has repeatedly violated several core provisions of the federal campaign finance law," as the Complaint characterizes at page 1. Rather, these donor reply forms amply demonstrate that Respondent is very well-informed with respect to the law's restrictions and requirements regarding contributions, takes seriously those restrictions and requirements, and published them to potential donors as an integral part of the fund raising process.

II. Allegation: "Accepting Corporate Sponsorships and Seeking Excessive Contributions for an Outdoor Fundraising Event"

Paragraphs 12 – 14 make various allegations regarding Ball4NY's "Rockin' Rib Fest & Battle of the Bands:

12. On or about July 25, 2009, Ball's campaign committee sponsored a "Rockin' Rib Fest & Battle of the Bands." Exhibit B.
13. The July 25, 2009, event was "sponsored" by the New York State Rifle & Pistol Association and the National Rifle Association. Exhibit B. On information and belief, both entities are corporations.
14. The Ball campaign sought additional "sponsorships" in connection with the July 25, 2009, event, including a "VIP Congressional Tent Sponsorship" priced at \$2,900 - \$500 in excess of the federal contribution limit. Exhibit B. Other Ball event solicitations have shown similar indifference to the \$2,400 limit. See, e.g., <http://www.ballforcongress.com/eventDetail.aspx?eventID=2650> (Exhibit C) (asking for \$2,500 and \$4,800 contributions, without regard to the per-election limit).

Ball4NY hosted an event known as the "Rockin' Rib Fest & Battle of the Bands" on July 25, 2009. The remainder of the allegations set forth above are incorrect.

Paragraphs 12-14 refer to "Exhibit B," which is a reproduction of an event flyer, along with a portion of an informational fundraising piece.

Attached to this Response is the final version of a pamphlet produced to publicize the event. See Response Exhibit 9. The disclaimer on this pamphlet indicates that it was paid for by Greg Ball Congressional Exploratory Committee. As noted above, Mr. Ball filed FEC Form 2 Statement of Candidacy and FEC Form 1 Statement of Organization on May 6, 2009, and transitioned from an exploratory committee to an authorized campaign committee. Accordingly, the pamphlet's disclaimer should have indicated that it was paid for by Ball4NY. In proofreading the pamphlet, Committee volunteers simply overlooked this detail. This error was inadvertent and entirely harmless. No one reading the pamphlet would be confused as to its source. In numerous instances, the FEC has dismissed cases involving incomplete or inaccurate disclaimers. See, e.g., MUR 5632 (Iosco County Republican Party), MUR 5556 (Porter for Congress), MUR 5834 (Darcy Burner for Congress).

Ball4NY anticipated receiving support from the *political action committees* of both the New York Rifle & Pistol Association and the National Rifle Association. Both organizations have supported Mr. Ball in the past as a New York State Assemblyman. However, neither contribution was made³, and the event's publicity was released before any revisions could be made. The "Rockin' Rib Fest & Battle of the Bands" was not "sponsored" by either entity, or by either entity's political action committee. See Affidavit of Maria DiSalvo at ¶¶ 9-10. Neither entity, and neither entity's political action committee, has contributed any funds to Ball4NY. Thus, the pamphlet simply contains an incorrect "sponsorship" statement, which in and of itself is not a violation of any provision of the FECA or FEC regulations.

A similar case of misidentification arose in a recent enforcement matter. In MUR 5859 (Lois Murphy For Congress Committee), the Murphy campaign issued a press release stating "ACORN Endorses Lois Murphy." The press release also indicated that ACORN sponsored a subsequent rally and canvassing effort. As the *Factual and Legal Analysis* states, "Respondents assert, and the available information suggests, that the Murphy Campaign incorrectly identified ACORN in its press release as the entity that endorsed Candidate Murphy, when it was actually a related state political committee registered in Pennsylvania – Pennsylvania ACORN ('PA-APAC') – that made the endorsement and sponsored the subsequent rally and canvassing." MUR 5859, F&LA at 2. Based on these facts, the FEC found no reason to believe that ACORN or the Lois Murphy For Congress Committee violated 2 U.S.C. § 441b. *Id.* at 4. MUR 5859 makes clear that misstating an endorsement or sponsorship on a campaign release is not a violation of FECA.⁴ See Response Exhibit 12.

³ Mr. Ball met with officials from the National Rifle Association regarding a contribution from the organization's political action committee on May 1 and May 29, 2009. Mr. Ball mistakenly believed the New York Rifle and Pistol Association maintained a federal political action committee. The organization, however, does not.

⁴ See also MUR 5883 (Brady Campaign to Prevent Gun Violence), in which the FEC dismissed a complaint alleging illegal coordination between a candidate and a corporation when, upon further review, it became clear that any

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In Paragraph 14, the Complaint alleges that "The Ball campaign sought additional 'sponsorships' in connection with the July 25, 2009, event, including a "VIP Congressional Tent Sponsorship" priced at \$2,900 - \$500 in excess of the federal contribution limit. Exhibit B. Other Ball event solicitations have shown similar indifference to the \$2,400 limit." With respect to the latter allegation, the Complaint refers to Exhibit C.

Ball4NY did not seek any corporate or otherwise impermissible "sponsorships" in connection with any of its campaign events. Respondent notes that "sponsorship" is not a cognizable violation of the FECA or FEC regulations. To the extent that the Complainant's use of the term "sponsorship" actually was intended to mean "endorsement" or "contribution," Ball4NY did not solicit or seek any impermissible endorsements, and did not solicit or accept any impermissible contributions. In fact, nearly two months before the "Rockin' Rib Fest & Battle of the Bands," on June 2, 2009, Ball4NY personnel discussed (internally) FEC Advisory Opinion 2007-10 (Reyes) regarding corporate signage at Congressman Reyes' proposed golf event. See Response Exhibit 10.³ The correspondents concluded that corporate signage and event sponsorship would be impermissible. In addition, the Ball4NY pamphlet specifically, and very clearly, states that "Contributions by corporations, foreign nationals (non green-card holders), labor unions and federal government contractors are prohibited." Unlike the complainant, who once again misuses a term to support an attention grabbing public allegation, the staff of Ball4NY researched the law in order to ensure compliance. See, e.g., Response Exhibit 10.

The Complaint also alleges that Ball4NY solicited contributions in excess of the "\$2,400 limit." As the complainant presumably knows, it is not illegal to solicit contributions in excess of \$2,400. Rather, it is only illegal to solicit contributions in excess of \$2,400 *per person per election*. See 2 U.S.C. § 441a(1)(A). Ball4NY did not receive any contributions greater than \$2,400 per person, per election or otherwise, in connection with the "Rockin' Rib Fest & Battle of the Bands" event, and therefore had no need for contributors to designate any amounts over \$2,400 to the general election. See Affidavit of Maria DiSalvo at ¶ 11. As demonstrated in Response Exhibit 5, however, any such contributor would have been asked to complete and sign a "Contribution Form" containing the following language: "I designate my contribution(s), as indicated above, which are composed of my personal funds, to Ball4NY as follows: the first \$2,400 for the 2010 primary election and any additional amount that I contribute up to \$2,400 for the 2010 general election." Thus, any contribution in excess of \$2,400 *would have been* properly designated.

Paragraph 14 also alleges that "[o]ther Ball event solicitations have shown similar indifference to the \$2,400 limit." The Complaint's Exhibit C consists of publicity for a September 30, 2009, event featuring Ari Fleischer. Both pages of Exhibit C include contribution options of \$2,500 and \$4,800. Beside each of these options is the language "(call for details)." These two amount

coordination that may have occurred took place between the candidate and the corporation's separate segregated fund.

³ Carla Marin is an attorney, and was serving in that capacity as a volunteer for Ball4NY. In attaching Exhibit 9 to this Response, Ball4NY and Gregory Ball waive attorney-client privilege solely with respect to the one email from Ms. Marin contained therein. However, Respondent hereby requests that the FEC redact in its entirety or exclude this Exhibit 9 from the documents placed on the public record upon the closing of this matter.

options were intended to allow donors to contribute to both the primary and general election campaigns of Ball4NY. Any donor who wished to do so would have been advised of the per person, per election contribution limits and the need to designate any portion of their contribution in excess of \$2,400 to the general election when he or she "call[ed] for details." In addition, Ball4NY's standard "Contribution Form" contained this information as well. Ultimately, notification to contributors of these election designation requirements was unnecessary as no person contributed more than \$2,400 in connection with this particular event. See Affidavit of Maria DiSalvo at ¶ 12. Accordingly, the allegations in the complaint regarding Exhibit C, to the extent a violation is even alleged, are entirely baseless and without merit.

III. Allegation: "Accepting Illegal Soft Money Transfers from Ball's Assembly Committee"

Paragraph 17, alleges that: "Ball's federal campaign has made and is making repeated use of photos, videos and other assets from his nonfederal campaign and/or his official New York Assembly office. See, e.g., <http://www.ballforcongress.com/multimedia.aspx>; (Exhibit D). Ball's filings to date with the Federal Election Commission show no payment to his Assembly campaign, nor to the State of New York, for the use of these photos."

The website page cited above in the Complaint contains 32 thumbnail screen captures which link to video footage. All 32 videos are freely available for any user to view on YouTube, as is plainly evident when a user "clicks" on any of the thumbnail links. None of these 32 videos were ever an "asset" of Mr. Ball's nonfederal campaign committee or his New York Assembly office. The use of publicly available information by a nonfederal campaign, followed by the use of that same material by a federal campaign, is not a prohibited transfer of funds or assets as set forth in 11 C.F.R. § 110.3(d). With respect to all video footage, the Complaint's allegations are frivolous.

The Complaint does not specify which "photos" were allegedly transferred from Mr. Ball's "nonfederal campaign and/or his official New York Assembly office." However, when a visitor clicks on the "photos" tab on the Ball4NY website, he or she is taken away from the Ball4NY website to a Picasa Web Album page titled "Greg Ball's Public Gallery." See <http://picasaweb.google.com/AssemblymanBall>. Picasa is a photo hosting service that allows users to create photo albums that may be viewed by the public. No cost is involved for either the photo uploader/hoster or the viewer. The photos that appear in the Picasa Web Album are the personal property of Greg Ball or Ball4NY. With respect to these photographs, the Complaint's allegations are frivolous.

On October 6, 2009, Ball4NY paid a licensing fee to the New York Assembly for the rights to use certain photographs owned by the Assembly or its photographer. See Affidavit of Maria DiSalvo at ¶ 13 and Exhibits 1-D and 1-E. All photos appearing on the Ball4NY website during the time of Mr. Ball's candidacy were either the personal property of Greg Ball, the Ball4NY Committee, or were licensed from the New York Assembly.

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Mr. Ball is unable to respond with specificity to the Complaint's allegation that "other assets" were improperly transferred to his Ball4NY, as the Complainant does not explain which "other assets" he has in mind. This allegation, unsupported with any facts or specificity, should be dismissed outright as "mere speculation." *See* MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas ("mere speculation . . . will not be accepted as true"). *See also* MUR 6077 (Coleman For Senate), Factual and Legal Analysis at 7 ("unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true"). Nevertheless, Respondent did not improperly transfer any "other assets."

IV. Allegation: "Voicing Illegal Robocalls"

Paragraphs 20 of the complaint alleges that "On or about June 29, 2009, an automated call featuring Ball was distributed to voters in the 19th Congressional District. The call contained no statement indicating who had paid for the call, or whether Ball had authorized it." The Complaint does not include a recording of the automated call in question, a transcript of the call, or any assertion that the Complainant or anyone the Complainant knows actually received the call in question. Rather, it contains only a bare assertion unaccompanied by any actual evidence.⁶ In this regard, the Complaint fails to adequately allege a violation upon which a reason to believe finding may be made. The Commission has previously stated that "[u]nless based on a complainant's personal knowledge, a source of information reasonably giving rise to a belief in the truth of the allegations must be identified." MUR 5141 (Moran), Statement of Reasons of David M. Mason, Karl J. Sandstrom, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold. *See also* MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas. And as three Commissioners more recently noted, "The RTB [reason to believe] standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges." MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Matthew S. Petersen, Caroline C. Hunter, and Donald F. McGahn at 6, n.12.

While the Complaint does not provide any information describing the content of the telephone call so that it can be conclusively identified, the Respondent believes the call in question concerned a July 6 Tea Party event. A recording of the call that was distributed to the public is included with this Response. *See* Response Exhibit 13. A transcript of the recorded call appears below:

Hello, this is State Assemblyman Greg Ball.
On July 6 at 7 pm join the Tea Party Patriots at Dutchess Stadium for the Hudson Valley's second Tea Party.

⁶ At Paragraph 20, the Complaint refers to Exhibit F. There does not appear to be any Exhibit F, however.

We can't afford to lose more jobs and we must unite as taxpayers and voters to fight these ongoing tax increases, the out of control spending and the bailouts and corporate welfare.

For more information, go to FishkillTeaParty.com, that's FishkillTeaParty.com.

Albany is a disaster, and in Washington, our own Congressman was one of the deciding votes for cap and trade, a national energy tax that will cost your family \$1600.

Have you had enough?

King George wanted 10%; we revolted.

Now's the time.

Our government is asking for nearly 50% and families are struggling just to get by.

Join me, the Tea Party Patriots on July 6 at 7 pm at Dutchess Stadium to say "Enough is enough."

Come early and if you can be kind to the environment by carpooling.

Let's fight and let's do it together.

This call was paid for by Ball4NY.

As demonstrated by both the recording of the recorded call, and the transcript above, the calls closed with this language: "This call was paid for by Ball4NY." Contrary to the assertions set forth in the Complaint, the telephone call contained a disclaimer.

In reviewing various Ball4NY materials, we determined that this recorded call had been paid for by Brian Callaghan for the purpose of promoting the Fishkill Tea Party event mentioned in the recording. Costs paid by Brian Callaghan were treated as an in-kind contribution in the amount of \$526.84 from Brian Callaghan to Ball4NY. Mr. Callaghan used a personal credit card to make payment to a vendor called Voice Broadcasting, located in Arlington, Texas. Mr. Ball has a long relationship with Voice Broadcasting, and suggested that Mr. Callaghan use Voice Broadcasting to produce and distribute the recorded call detailed above. Respondent believes that Voice Broadcasting included the disclaimer "Paid for by Ball4NY" because of Mr. Ball's participation in the recording, and that this disclaimer was included on the robocalls as a result of an incorrect vendor assumption. Simply put, the telephone call in question included the disclaimer the complaint alleged was missing, which once again calls into question the true motivation of the Complainant. Given the nature of the communication, it was not possible to "correct" the disclaimer once the calls were made. In past enforcement matters, the FEC has routinely dismissed complaints involving incomplete and/or inaccurate disclaimers, especially where the amount at issue is minimal. See, e.g., MUR 5865 (New Trier Democratic Organization) (dismissing with admonishment for deficient disclaimer), MUR 5819 (U.S. Chamber of Commerce) (close file with admonishment for deficient disclaimer), MUR 5632 (Iosco County Republican Party) (dismissing allegations of deficient disclaimer), MUR 5580 (Alaska Democratic Party) (no reason to believe finding in case involving missing disclaimer due to inadvertent vendor error), MUR 5556 (Porter for Congress) (closing file in case involving omitted disclaimer due to minimal costs involved).

Please feel free to contact us if you have any questions or if you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurence Levy / m Bayes". The signature is written in a cursive, flowing style.

Laurence Levy
Michael Bayes

Index of Attachments

Exhibit 1: Affidavit of Maria DiSalvo

Exhibit 1-A: Invoice (Golf Outing)

Exhibit 1-B: Check (Golf Outing)

Exhibit 1-C: Spreadsheet (Silent Auction)

Exhibit 1-D: Invoice (Photographs)

Exhibit 1-E: Check (Photographs)

Exhibit 2: News article (AllBusiness.com, *Campaign finance law violations complaint filed against Ball*)

Exhibit 3: News article (Poughkeepsie Journal, *Democrats file FEC complaint against Ball*)

Exhibit 4: Email from Jacquelyn Ambrosino

Exhibit 5: Statement of Candidacy of Gregory R. Ball

Exhibit 6: Statement of Organization of Ball4NY

Exhibit 7: Ball4NY Contribution Form

Exhibit 8: Ball4NY In-Kind Contribution Form

Exhibit 9: "Rockin' Rib Fest & Battle of the Bands" Pamphlet

Exhibit 10: Correspondence of Carla Marin (June 2, 2009)

Exhibit 11: Advisory Opinion 1981-03 (Robinson)

Exhibit 12: MUR 5859 (Lois Murphy For Congress Committee), Factual and Legal Analysis

Exhibit 13: CD-ROM (recording of robocall)

AllBusiness

Campaign finance law violations complaint filed against Ball

Allegations of federal campaign finance law violations have been leveled against Assemblyman Greg Ball, R-Camel, and his campaign organization, Ball4NY.

Gary Levine, the Dutchess County Division chairman of the New York Democratic Lawyers Council, said the complaints were sent Friday to the Federal Election Commission.

Ball is challenging U.S. Rep. John Hall, D-Dover, for the 19th Congressional District seat in 2010.

"Assemblyman Greg Ball has shown a disturbing disregard for the law in his campaign for Congress," Levine said. "From soliciting and accepting illegal corporate contributions to exceeding lawful campaign donation limits, from improper use of taxpayer resources for his campaign activities to voicing legally insufficient robo-calls, there is a troubling pattern."

Matt Mackowiak, the general consultant for Ball4NY, called the complaint baseless.

"This is purely political. There have been no complaints or requests for information made by the Federal Election Commission. If we do hear from the FEC, we have full faith this partisan complaint will be dismissed," Mackowiak said in an e-mail.

Levine said Ball left the council no choice but to file a complaint with the Federal Election Commission and request sanctions.

"We ask the FEC to make sure he does not continue to violate these important laws," he said.

The three-count complaint alleges Ball solicited and received "soft money," unregulated contributions made to political parties; transferred assets from his nonfederal, or Assembly, campaign to his congressional campaign, and distributed ads without disclosing who paid for or authorized them.

Supporting documents allege Ball's congressional exploratory committee held a May 1 golf outing that included a silent auction, for which Ball representative Jacqueline Ambrosino asked for donations, such as tickets to sporting events, gift certificates, plane tickets and TVs. The request was for donations from businesses and people.

The complaint alleged another event on July 25, sponsored by the New York State Rifle & Pistol Association and the National Rifle Association, offered a VIP congressional tent sponsorship for \$2,900, or \$500 above the federal limit.

Also alleged is Ball's use of "photos, videos and other assets from his nonfederal campaign and/or his official New York Assembly office" without compensating his Assembly campaign or the state.

Levine's complaint included an automated call by Ball to 19th Congressional District voters during which there was no indication of who paid for or authorized the call.

Reach Michael Woyton at mwoyton@poughkeepsiejournal.com or 845-451-4518.

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October 2, 2009

Democrats file FEC complaint against Ball

The New York Democratic Lawyers Council has filed a complaint with the Federal Election Commission against Assemblyman Greg Ball and Ball4NY.

The complaint cites several repeated violations of federal campaign finance laws.

The complaint, filed by Gary Levine, Dutchess County Division chairman of the NYDLC, alleges specific examples of illegal solicitations, illegal use of tax payer funded New York State Assembly assets for his Congressional campaign, and improper automated phone calls.

"Assemblyman Greg Ball has shown a disturbing disregard for the law in his campaign for Congress. From soliciting and accepting illegal corporate contributions, to exceeding lawful campaign donation limits; from improper use of tax payer resources for his campaign activities, to voicing legally insufficient robo-calls, there is a troubling pattern," said Levine.

"As such, Greg Ball has left us no choice but to file a complaint before the Federal Election Commission and request sanctions and punishment for his actions. We ask the FEC to make sure he does not continue to violate these important laws," Levine concluded.

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----- Forwarded message -----

From: Jacquelyn Ambrosino
Date: Fri, May 1, 2009 at 10:10 AM
Subject: 4th Annual Golf Outing
To: list@ball4ny.com

Hello!

Greg Ball's 4th Annual Golf Outing will be taking place on June 5th, 2009 at Hudson Hills Golf Course and Murphy's Restaurant. You can view all the details at www.gballevents.com. For this big event we need help pulling in donated items for the silent auction that will be going on throughout the day.

To accomplish this task, I will be organizing a Silent Auction Committee that will meet a few times prior to the golf outing. Please let me know if you will be able to help by calling me at or e-mailing me at .

We are looking for tickets to sporting events, televisions, gift certificates to restaurants and services (such as legal and accounting services), foursomes for other golf courses, trips, plane tickets, spa gift certificates, televisions, just to name just a few....

You can reach out to your network and try to get donations from both businesses and people. Many people have saved up points on their credit cards that can be redeemed for many items that we could auction off. When working with a business, you can emphasize the foot traffic that will be generated by having their name featured at our event and in a brochure to be handed out to everyone that attends.

Thank you and I look forward to working with you!

Regards,

Jacqui Ambrosino

Ball4NY Congressional Exploratory Committee 2010

www.supportgreg.com

www.gballevnts.com

P.S. To unsubscribe, please reply to list@ball4ny.com with the words 'unsubscribe list' in the body of the e-mail.

To unsubscribe, click "reply to all" and send a message with the word "Unsubscribe list" in the body of the e-mail.

Ensure you are responding to "list@ball4ny.com" in order to unsubscribe!

FEC FORM 2

STATEMENT OF CANDIDACY

RECEIVED
FEC MAIL CENTER

789 MAY - 3 4 11 45

1. (a) Name of Candidate (in full) Gregory R. Ball		2. Candidate's FEC Identification Number
(b) Address (number and street) 9 Seward Rd		3. Is This Statement <input checked="" type="checkbox"/> New <input type="checkbox"/> OR <input type="checkbox"/> Amended (A)
(c) City, State, and ZIP Code Patterson, NY 10563		
4. Party Affiliation REP	5. Office Sought HOUSE	6. State & District of Candidate NY-19

DESIGNATION OF PRINCIPAL CAMPAIGN COMMITTEE

7. I hereby designate the following named political committee as my Principal Campaign Committee for the 2010 election(s).
(year of election)

NOTE: This designation should be filed with the appropriate office listed in the instructions.

(a) Name of Committee (in full) BALL 4 NY
(b) Address (number and street) PO BOX 135
(c) City, State, and ZIP Code Patterson NY 10563

DESIGNATION OF OTHER AUTHORIZED COMMITTEES


(Including Joint Fundraising Representatives)

8. I hereby authorize the following named committee, which is NOT my principal campaign committee, to receive and expend funds on behalf of my candidacy.

NOTE: This designation should be filed with the principal campaign committee.

(a) Name of Committee (in full)
(b) Address (number and street)
(c) City, State, and ZIP Code

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Signature of Candidate 	Date 5/1/09
---------------------------------------------------------------------------------------------------------------	-----------------------

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to penalties of 2 U.S.C. §437g.

--	--	--	--	--	--	--	--	--

10044273030

Federal Election Commission
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<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> No Postmark	
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<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input type="checkbox"/> Other (Specify):	Date of Receipt or Postmarked


PREPARER
(3/2005)

5/7/09
DATE PREPARED

10044273031

70:
Federal Election Commission
999 "E" St., NW
Washington, DC 20463

10044273032

From: Greg Ball

FEC
FORM 1

STATEMENT OF
ORGANIZATION

RECEIVED
FEC MAIL CENTER
200 MAY -7 A 11:44

Office Use Only

1. NAME OF
COMMITTEE (in full)

☐ (Check if name
is changed)

Example: If typing, type
over the lines.

12FE4M5

BALL4NY

ADDRESS (number and street)

R.O. BOX 135

☐ (Check if address
is changed)

PATTERSON

NY

12563

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

☐ (Check if address
is changed)

BALL4NY.COM

COMMITTEE'S WEB PAGE ADDRESS (URL)

☐ (Check if address
is changed)

WWW.BALL4NY.COM

2. DATE

05/01/2009

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT

☒ NEW (N)

OR

☐ AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Maria Disolvo

Signature of Treasurer

Maria Disolvo

Date

05/01/2009

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
Use
Only

For further information contact:
Federal Election Commission
Toll Free 800-424-9540
Local 202-694-1100

FEC FORM 1
(Revised 02/2008)

10044273033

6. TYPE OF COMMITTEE

Candidate Committee:

- (a) ☒ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate

HERGORY, R. BALL

Candidate Party Affiliation

REP

Office Sought:

☒ House☐ Senate☐ President

State

NY

District

19

- (c) ☐ This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate

Party Committee:

- (d) ☐ This committee is a ☐ (National, State or subordinate) committee of the ☐ (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) ☐ This committee is a separate segregated fund. (Identify connected organization on line 8.) Its connected organization is:

☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization

☐ Membership Organization ☐ Trade Association ☐ Cooperative

☐ In addition, this committee is a Lobbyist/Registrant PAC.

- (f) ☐ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

☐ In addition, this committee is a Lobbyist/Registrant PAC.

☐ In addition, this committee is a Leadership PAC. (Identify sponsor on line 8.)

Joint Fundraising Representative:

- (g) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1.	<input type="checkbox"/>	FEC ID number	<input type="checkbox"/>
2.	<input type="checkbox"/>	FEC ID number	<input type="checkbox"/>
3.	<input type="checkbox"/>	FEC ID number	<input type="checkbox"/>
4.	<input type="checkbox"/>	FEC ID number	<input type="checkbox"/>

10044273034

Write or Type Committee Name

BALL4NY

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

Mailing Address

CITY

STATE

ZIP CODE

Relationship: ☐ Connected Organization ☐ Affiliated Committee ☐ Joint Fundraising Representative ☐ Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.

Full Name

CARLA MARIN

Mailing Address

11762 ROUTE 6

CARMEL

N.Y.

1105121-

Title or Position

CITY

STATE

ZIP CODE

RECORDS CUSTODIAN

Telephone number

914-299-9017

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name
of Treasurer

MARIA DISALVO

Mailing Address

683 R.T.E. 311

PATTERSON

N.J.

1125631-

Title or Position

CITY

STATE

ZIP CODE

TREASURER

Telephone number

856-8281-17487

10044273035

Full Name of
Designated
Agent

Mailing Address

Title or Position

Telephone number

2. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

J.P. MORGAN CHASE, N.A.

Mailing Address

1700 CLOCKTOWER COMMONS

GREENTREE

NY

110569

CITY

STATE

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address


CITY

STATE

ZIP CODE

10044273036

Federal Election Commission
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<input checked="" type="checkbox"/> USPS Express Mail	Postmarked 5/6/09
<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> No Postmark	
<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
---Next Business Day Delivery <input type="checkbox"/>	
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input type="checkbox"/> Other (Specify):	Date of Receipt or Postmarked
	5/9/09
PREPARER (3/2005)	DATE PREPARED

10044273037

CONTRIBUTION FORM

BAL4NY
www.bal4ny.com
POB 135, Patterson, NY 12563

Paid for by Bal4NY

An individual may contribute a maximum amount of \$2,400 per election (the primary and general are separate elections) to a federal candidate for a total of \$4,800. Federal political action committees PAC's may contribute \$2,400 (00) per election cycle; Federal multi-candidate PAC or a Federal multicandidate political committee may contribute \$5,000 per election. Contributions from corporations (which include LLC's that have corporate taxation status with the IRS and also LLC's which have publicly traded shares, and LLC's and Partnership which have federal government contracts or which are negotiating such contracts), labor organization treasury funds, foreign nationals, and federal government contractors are prohibited. Corporations and individuals are strictly prohibited from reimbursing another person for making a contribution to Bal4NY.

Federal law requires political committees such as Bal4NY to use their best efforts to obtain, maintain and report the name, mailing address, occupation and employer for each individual whose contributions aggregate in excess of \$200 per election cycle.

Please fill out the following below, required by Federal Law, for each individual contributor for each individual transaction. (If you are (a) retired, please enter N/A under Employer and Retired under Occupation; (b) if a homemaker, please enter N/A - Homemaker; (c) if self-employed, please enter "Self-Employed" under Employer and describe your line of work under Occupation.)

Name (individual or Name of partnership, LLC, PAC or committee):

Address, City, State, Zip (and mailing address if different):

Phone: (H) _____ (W) _____ (C) _____ E-mail: _____

Employer: _____ Occupation: _____

CONTRIBUTION: [For PAC, political committee or joint checking contributions, please call (845) 582-0548]

1. Amount of check enclosed: \$ _____
Please make checks payable to Bal4NY and mail to PO Box address above

2. Charge my contribution to my personal, not corporate, American Express, Discover, Visa, or MasterCard (circle one) for the amount of \$ _____
Name as it exactly appears on the Card: _____
Credit Card Number: _____ Expiration date of Card: _____

3. If an LLC or Partnership, how the above contribution is attributed to the following members/partners of such LLC or Partnership:

Name: _____ Attributed Contribution Amount: \$ _____

Name: _____ Attributed Contribution Amount: \$ _____

LLC's or Partnerships with foreign nationals, corporate partners/members may not attribute any contribution amount to such foreign national, corporate partner or corporate member. Contact Bal4NY for attribution rule

4. You may also contribute securely online with your credit card at: www.bal4ny.com

5. In making a contribution to Bal4NY, I, the contributor named above, affirms the following as true and correct
- I at least 18 years of age and I am a United States citizen or a permanent resident alien (I am not a foreign national (non green-card holder) who lacks permanent residence in the United States nor am I a registered foreign agent).
 - This contribution is made from my own funds, and not those of others;
 - This contribution is not made from funds of a corporation, an LLC that has corporate filing status with the IRS, a labor organization, a national bank or a Federal government contractor;
 - If made by credit or debit card, this contribution is made on a personal credit card or debit card for which I have the legal obligation to pay, and is not made either on a corporate or business entity card or on the card of another person.
 - If applicable, the LLC or Partnership named above is eligible to make the contribution and allocates the contribution is attributed to its members as indicated above.

I designate my contribution(s), as indicated above, which are composed of my personal funds, to Bal4NY as follows: the first \$2,400 for the 2010 primary election and any additional amount that I contribute up to \$2,400 for the 2010 general election.

Signature (required) _____ If applicable, Member/Partner

Contributions or gifts to Bal4NY are not tax deductible for federal income tax purposes. Corporations and individuals are strictly prohibited from reimbursing another person for making a contribution to Bal4NY

10044273038

IN KIND CONTRIBUTION
FORM

BALHNY
www.bal4ny.com
POB 135, Patterson, NY 12563

Paid for by BalHNY

An individual may contribute a maximum amount of \$2,400 per election (the primary and general are separate elections) to a federal candidate for a total of \$4,800. Federal political action committees PAC's may contribute \$2,400.00 per election cycle; Federal multi-candidate PAC or a Federal multicandidate political committee may contribute \$5,000 per election. Contributions from corporations (which include LLC's that have corporate taxation status with the IRS and also LLC's which have publicly traded shares, and LLC's and Partnership which have federal government contracts or which are negotiating such contracts), labor organizations, foreign nationals, and federal government contractors are prohibited. Corporations and individuals are strictly prohibited from reimbursing another person for making a contribution to BalHNY.

Federal law requires political committees such as BalHNY to use their best efforts to obtain, maintain and report the name, mailing address, occupation and employer for each individual whose contributions aggregate in excess of \$200 per election cycle.

Please fill out the following below, required by Federal Law, for each individual contributor for each individual transaction. [If you are (a) retired, please enter N/A under Employer and Retired under Occupation; (b) if a homemaker, please enter N/A - Homemaker; (c) if self-employed, please enter "Self-employed" under Employer and describe your line of work under Occupation.]

Name of individual or Name of partnership, LLC, PAC or committee:

Address, City, State, Zip (and mailing address if different):

Phone (H) (W) (C) E-mail

Employer Occupation

CONTRIBUTION/DONATION [For PAC, LLC, partnership or political committee contributions, please call (845) 582-0548]

1. Service donated/contributed (describe):

Value of Service donated/contributed: \$

2. Item donated/contributed (describe or list):

Value of item donated/contributed: \$

3. If an LLC or Partnership, how the above contribution is attributed to the following members/partners of such LLC or Partnership:

Name	Attributed Contribution Amount \$
------	-----------------------------------

Name:	Attributed Contribution Amount: \$
-------	------------------------------------

LLCs or Partnerships with foreign national or corporate partners/members may not attribute any contribution amount to such foreign national, corporate partner or corporate member. Contact BalHNY for attribution rule.

4. You may also contribute securely online with your credit card at

5. In making a contribution to BalHNY, I, the contributor named above, affirms the following as true and correct:

- I am at least 18 years of age and I am a United States citizen or a permanent resident alien (I am not a foreign national (non green-card holder) who lacks permanent residence in the United States nor am I a registered foreign agent);
- This contribution is made from my own funds, and not those of others;
- This contribution is not made from funds of a corporation, an LLC that has corporate filing status with the IRS, a labor organization, a national bank or a Federal government contractor;
- If made by credit or debit card, this contribution is made on a personal credit card or debit card for which I have the legal obligation to pay, and is not made either on a corporate or business entity card or on the card of another person.
- If applicable, the LLC or Partnership named above is eligible to make the contribution and allocates the contribution as attributed to its members as indicated above.

I designate my contribution(s), as indicated above, which are composed of my personal funds, to BalHNY as follows: the first \$2,400 for the 2010 primary election and any additional amount that I contribute up to \$2,400 for the 2010 general election.

Signature [required] _____, if applicable, Member/Partner

Contributions or gifts to BalHNY are not tax deductible for federal income tax purposes. Corporations and individuals are strictly prohibited from reimbursing another person for making a contribution to BalHNY.

10044273039

Sign Up for the BBQ Competition! Today.

**Individuals.
Local Restaurants.
BBQ Afficionados
and Backyard BBQers
Are Welcome!**

REGISTRATION: Competitors must BQ enough ribs pieces for 75-100 guests. Setup at 10:30 am and stay until 5:00 pm. You provide your own supplies and equipment.

Competitor Name _____

Competitor Address _____

Competitor City _____

Competitor State _____

Restaurant _____

Restaurant Address _____

Restaurant Phone _____

BALL

Paid for by Greg Ball Congressional
Exploratory Committee

Rockin' Rib Fest & BATTLE RIBS

Saturday, July 22nd | Noon - 7:30 pm | The North Ridge Farm, Patterson, NY

PASSES TO VIP CONGRESSIONAL TENT: ○ \$75 (per person)

Sponsored by the NY State Rifle & Pistol Association.
Join your local and state elected officials with all you can eat and drink and preferred seating in the VIP tent.

REGULAR ADMISSION (at the gate): ○ \$10 ○ \$20
includes general admission and rib testing contest. (per person) (per car load)

Number of Tickets _____

Name _____

Address _____

Phone _____

E-mail _____

Federal Law requires that we collect the following information for all Congressional donors:

Employer _____

Occupation _____

Please make checks payable to **BALLANY**
They can be mailed with this form too:

BALLANY
P.O. BOX 135
Patterson, NY 12563

Or pay by credit card
☐ American Express ☐ Visa ☐ Mastercard

Card Number _____

Expiration Date _____

Security Code _____

Patrons may register and sign up for food orders to collect and report the exact number of attendees. A list of attendees will be provided to the sponsor. A \$500 fee is included in the registration fee. Registration fees include: two guest car passes, two rib and drink passes, preferred seating in the VIP tent. Contributions or gifts to the Greg Ball Congressional Exploratory Committee are not deductible as charitable contributions for Federal Income Tax purposes.

ASSEMBLYMAN
GREG BALL'S
4TH ANNUAL

4TH ANNUAL

Rockin' Rib Fest & BATTLE 5 BANDS

EVENT CHAIRS & HONORARY NEG JUDGES

State Senator Vincent Labol County Legislator George Gre
 Sheriff Dutch Anderson County Legislator Ben Thompson
 State Assemblyman Irving Bell County Legislator Billy Paces
 Councilman Joseph Caputo

SPONSORS

Assemblyman Gerald Compton
 Expenditure Committee

Saturday, July 23rd (1st Anniversary) - 7:00 p.m.

LOCATION

The North Maple Farm
 Located at 683 Route 371, Patterson, NY 12563

WHAT

800 rockabilly and legions will compete for the top rib in the "Rockin' Rib" and elected officials will judge

FROM THE THE WINDING TRAIL
 Games, raffle and prizes for adults and children.

- 800 COMPETITION ○ SPONSORED BY THE NRA
- VENDORS ○ BEAUTIFUL 300 ACRE HORSE FARM

LIVE MUSIC

Sponsorships

Please Check a Sponsor Level:

- Sponso Sponsorship | \$1,000
- Backin' Rib Jockey Table Sponsorship | \$500
- Entry Gate Banner & Firm Sponsorship | \$250
- Band Sponsorship | \$2,400
- Backin' Rib Event Sponsorship | \$1,000

Name _____

Address _____

Phone _____

E-mail _____

Please check the following information for the following information:



Backin' Rib Jockey Table Sponsorship | \$500

BACKIN' RIB BALL

NY 12563

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

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Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500

Backin' Rib Jockey Table Sponsorship | \$500



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 24, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-3

Ms. Ann M. Robinson
c/o The Spokesman
Box 1964, 115 N. Center Street
Casper, Wyoming 82602

Dear Ms. Robinson:

This responds to your letter of January 8, 1981, as supplemented by letter of February 9, requesting an advisory opinion on behalf of The Spokesman, the official organ of the Democratic Party of the State of Wyoming, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of corporate and business checks for advertising in The Spokesman.

According to your letters, The Spokesman is published quarterly with a special 5th edition in October during election years. In the past the costs of publication have been absorbed by the Democratic Party of Wyoming. The party will continue to absorb the costs if adequate advertising or donations cannot be obtained to cover the costs of publishing. To this point The Spokesman has operated under the policy that checks for advertising must be drawn on personal accounts and that The Spokesman could not accept business or corporate checks.¹ Moreover, under that policy all funds for advertising are considered to be contributions. Currently, all checks for advertising space, whether made payable to The Spokesman or to the Party are deposited in the same party account.

From the copies of the two issues of The Spokesman which you provided to the Commission it appears that advertising usually takes block form and simply mentions the name of the business, proprietor, and business location. You explain that under the restrictive policy that allows only personal checks to be accepted for advertising, The Spokesman is not able to break even on the cost of publication. If business or corporate checks could be accepted you anticipate that sufficient advertising could be sold to defray most publication costs. Thus, you

¹ Wyoming law prohibits corporate, labor organization, and business contributions. See the Wyoming Election code of 1973, as amended, §22-25-102.

10044273042

ask if there is any way in which business or corporate checks could be accepted for advertising. You also ask if advertisers may claim the cost of advertising as a business expense.

At the outset it is necessary to set forth those prohibitions and limitations in the Act which are relevant to your request. Specifically, under 2 U.S.C. 441b it is unlawful for any, national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to Federal, State or local office. It is also unlawful for any corporation or labor organization to make any contribution or expenditure in connection with any Federal election. See also the prohibitions on contributions by Government contractors and foreign nationals. 2 U.S.C. 441c and 441e.

In the case of permissible sources of contributions and expenditures, the Act limits the amounts of these contributions. 2 U.S.C. 441a. Thus, a permissible contribution by a person or business which is not incorporated, such as a partnership or sole proprietorship, is subject to the limits of 441a. See also 11 CFR 110.1. Therefore, to the extent that publication of The Spokesman is "for the purpose of influencing" or is "in connection with" a Federal election and funds paid by corporations or labor organizations for advertising are used to defray the expenses of The Spokesman, those funds would be contributions or expenditures that are prohibited under the Act. All other funds from permissible sources would be subject to contribution limits.

The Commission has in the past addressed a similar situation involving the financing by advertising of a State Party newsletter. In Advisory Opinion 1978-46 (copy enclosed) the Commission concluded that the acceptance of corporate funds for advertisements placed in a monthly party newsletter constituted contributions under the Act. However, the opinion went on to state that, if proper under State law, proceeds from corporate ads could be accepted by the Party and used for State and local election purposes. Moreover, the expenses of preparing, publishing, and distributing the newsletter would be regarded as Federal election-related if communications carried in the newsletter would be regarded as for the purpose of influencing the election of any person to Federal office or in connection with a Federal election. Thus, the Commission concluded that if any material published in the newsletter related to Federal elections, expenses incurred for the newsletter would need to be paid, on an allocated basis, from the Federal campaign committee of the State Party.

As in Advisory Opinion 1978-46, the Commission here concludes that amounts paid for advertising in The Spokesman do constitute contributions. However, the costs of the Party publication can be allocated between those costs that are State and local election-related and those that are Federal election-related. Those that are determined to be allocable to Federal elections must be paid from the Federal campaign committee of the Wyoming Democratic Party which contains funds from only permissible sources under the Act. The amount allocable to the Federal campaign committee for payment and reporting may be determined by using the formula set forth in 106.1(e)² of Commission regulations or by an allocation based upon the column

² 11 CFR 106.1(e) reads:

Party committees and other political committees which have established Federal campaign committees pursuant to 11 CFR 102.5 shall allocate administrative expenses on a reasonable basis between their Federal and non-Federal accounts in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis.

inches (or space) devoted to Federal candidates as a class, without express advocacy of specific Federal candidates.

To summarize, payment of the costs of The Spokesman can be allocated between State and local elections and Federal elections. The amount allocable to Federal elections must be paid for from sources permissible under the Act which are contained in the account of the Federal campaign committee.³ Corporate funds could not be used to defray the costs of the Federal portion. "Business" (e.g., partnerships or sole proprietorships) funds however, may be used to defray the cost of the Federal portion if they are not given by a prohibited source, such as a corporation or labor organization, and do not exceed limits in 2 U.S.C. 441a.

Since this opinion is based only upon the Act, it should not be interpreted as removing any prohibitions which may be imposed under the Wyoming statutes with regard to State and local elections. As for your second question, whether the payment for advertising may be claimed as a business expense, rather than being characterized as a political contribution, that issue is beyond the jurisdiction of the Commission. For your information, see 276 of the Internal Revenue Code of 1954, as amended.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in our request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure

³ Under 11 CFR 100.8(b)(16) a state committee of a political Party may under certain circumstances pay the costs of campaign materials such as party tabloids or newsletters if the portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

10044273044



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

NOV - 6 2007

James Lamb, Esq.
Harmon, Curran, Spielberg & Eisenberg, LLP
1726 M Street, NW, Suite 600
Washington, DC 20036

RE: MUR 5859
Lois Murphy for Congress
Committee
and Katherine A. Rowe, in her
official capacity as treasurer

Dear Mr. Lamb:

On October 30, 2006, the Federal Election Commission notified your clients, Lois Murphy for Congress Committee and Katherine A. Rowe, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 10, 2007, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe they violated 2 U.S.C. § 441b, a provision of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10044273045

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

**Respondents: Association of Community Organizations
for Reform Now (ACORN)
Lois Murphy for Congress Committee
and Katherine A. Rowe, as Treasurer**

MUR 5859

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by Jim Gerlach for Congress Committee and Mike DeHaven, in his official capacity as treasurer, against the Association of Community Organizations for Reform Now ("ACORN"), a non-profit organization whose mission is to increase civic involvement and political participation in low and moderate-income and minority communities, and Lois Murphy for Congress Committee and Katherine A. Rowe, in her official capacity as treasurer. See 2 U.S.C. § 437g(a)(1). The Complaint alleges that ACORN made coordinated expenditures that resulted in excessive and unreported in-kind contributions to Lois Murphy for Congress Committee and Katherine A. Rowe, in her official capacity as Treasurer (the "Murphy Campaign"), in violation of 2 U.S.C. § 441b, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Specifically, the Complaint cites a April 29, 2006 press release from Lois Murphy's website entitled, "ACORN Endorses Lois Murphy," which describes a rally and post-event door-to-door canvassing by Ms. Murphy and rally participants to discuss with potential voters the issues of health care, minimum wage and education. *Id.* Complaint, Attachment 1. For the reasons discussed below, the Commission finds no reason to believe that the Association of Community Organizations for Reform Now or Lois

Murphy for Congress Committee and Katherine A. Rowe, in her official capacity as Treasurer, violated 2 U.S.C. § 441b.

II. FACTUAL AND LEGAL ANALYSIS

Respondents assert, and the available information suggests, that the Murphy Campaign incorrectly identified ACORN in its press release as the entity that endorsed Candidate Murphy, when it was actually a related state political committee registered in Pennsylvania – Pennsylvania ACORN (“PA-APAC”) – that made the endorsement and sponsored the subsequent rally and canvassing. ACORN Response at 1; Murphy Response at 2. ACORN and Murphy contend that they did not violate the Act because (1) it was the political action committee, PA-APAC, and not ACORN that sponsored and made disbursements in connection with the event; (2) the attendees at the event were all PA-APAC volunteers; (3) the expenditures made by PA-APAC were within federal contribution limits; and (4) the Murphy Campaign’s participation in the event was permissible under the Act. *Id.*

The Murphy Campaign submits the declaration of its Campaign Manager, Jill Harris, who states that in late March 2006 the Campaign received a letter from PA-APAC, not ACORN, endorsing Murphy’s candidacy, that the Campaign worked with PA-APAC volunteers in preparation for the public announcement of the endorsement. The Murphy Campaign acknowledges that the April 26, 2006 press release mistakenly stated that ACORN endorsed Murphy, when it should have stated that PA-APAC endorsed Murphy. Murphy Response, Attachment 3, Declaration of Jill Harris (“Harris Decl.”) at ¶¶ 2-4. Harris also confirms that Murphy attended the PA-APAC rally to

accept its endorsement and that Murphy never received an endorsement from the national ACORN. *Id.* at ¶¶ 5-6.

Respondents also contend that the costs associated with the event were minimal and well within federal guidelines. ACORN Response at 1; Murphy Response at 2. The Declaration of Ali Kronley, Head Organizer for ACORN in Pennsylvania, states that the estimated costs for the rally totaled \$1,045 – which is comprised of \$300 for materials, \$100 donation by PA-APAC to the Murphy Campaign, and \$645 in estimated labor costs for the PA-APAC employee who coordinated the rally. ACORN Response, Attachment 1, Declaration of Ali Kronley (“Kronley Decl.”) at ¶¶ 4-7. Additionally, Kronley states that the funds in the PA-APAC account are made up of donations made by individual ACORN members, usually at a rate of approximately \$3-\$5 a month per member, and that in the past five years no individual has contributed more than \$120 per year. *Id.* at ¶ 3.

The Complaint’s assertion that ACORN coordinated the rally and canvassing event with the Murphy Campaign appears to be incorrect. It was not ACORN, but an affiliated state political committee, PA-APAC, that endorsed Murphy at its rally and canvassing event. ACORN Response, Attachment 1, Murphy Response, Exhibit C. While it is true that ACORN, as a corporation, was prohibited from making in-kind contributions to the Murphy campaign in the form of labor and materials for the event, *see* 2 U.S.C. § 441b(a), PA-APAC, as a political action committee, was not so circumscribed and was permitted to make such disbursements, subject to the applicable contribution limits and disclosure requirements. *See* 11 C.F.R. §§ 109.21 and 114.4(C)(6). The \$945 expended by PA-APAC for the rally and canvassing event, in

addition to its \$100 direct contribution to the Murphy Campaign, were within the \$2,000 contribution limit set forth in the Act.¹ See 2 U.S.C. § 441a(a)(1)(D).

Accordingly, based on the information in the Complaint, and the Responses submitted thereto, the Commission finds no reason to believe that the Association of Community Organizations for Reform Now or Lois Murphy for Congress Committee and Katherine A. Rowe, in her official capacity as Treasurer, violated 2 U.S.C. § 441b.

¹ PA-APAC's contribution was disclosed by the Murphy Campaign in its Pre-Primary Report filed May 4, 2006.